

IN THE UNITED STATES DISTRICT COURT  
OF WESTERN PENNSYLVANIA

UNITED STATES OF AMERICA, CRIMINAL ACTION

vs. No. 12-91

KHALIFA ALI AL-AKILI,

Defendant.

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Transcript of CHANGE OF PLEA HEARING  
held on NOVEMBER 27, 2012  
United States District Court, Pittsburgh, Pennsylvania  
BEFORE: HONORABLE MARK HORNAK, DISTRICT JUDGE

APPEARANCES:

For USA:	James R. Wilson, Esq. Assistant U.S. Attorney U.S. Attorney's Office 700 Grant Street Pittsburgh, PA 15219
For the Defendant:	Marketa Sims, Esq. Federal Public Defender's Office 1001 Liberty Avenue Pittsburgh, PA 15222-3716
Court Reporter:	Karen M. Earley, RDR-CRR 6260 U.S. Courthouse 700 Grant Street Pittsburgh, PA 15219 412-201-2660

Proceedings reported by mechanical stenography.  
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 (November 27, 2012. In open court.)

3 THE COURT: Good afternoon, everyone. Please be  
4 seated.

5 This is the time and date set for a change of plea  
6 hearing in the case of United States of America versus Khalifa  
7 Ali Al-Akili.

8 Will counsel for the United States of America  
9 please enter his appearance.

10 MR. WILSON: Thank you, Your Honor.

11 James Wilson on behalf of the United States.

12 THE COURT: Thank you, Mr. Wilson. Who is with you  
13 at counsel table today?

14 MR. WILSON: This is Jay Neely. Mr. Neely actually  
15 is an air marshal on assignment working with a task force  
16 working with the FBI.

17 THE COURT: Will counsel for the defendant please  
18 enter her appearance.

19 MS. SIMS: May it please the Court, Marketa Sims on  
20 behalf of Mr. Al-Akili.

21 THE COURT: Who is seated with you at counsel  
22 table?

23 MS. SIMS: The defendant Khalifa Ali Al-Akili.

24 THE COURT: Thank you.

25 Mr. Al-Akili, the Court is informed you wish to

1 plead guilty to Count 1 of the indictment in this matter, is  
2 that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Ms. Sims and Mr. Al-Akili and  
5 Mr. Wilson, I would ask you to please come up to the front  
6 podium.

7 I ask everyone if they can keep their voices up so  
8 Ms. Earley can make an accurate record of what we're working  
9 on today.

10 Before accepting a guilty plea, there are a number  
11 of questions I must ask you in order to assure that it would  
12 be a valid plea.

13 If at any time you do not understand any of the  
14 questions I ask you, please let me know and I will further  
15 explain the question to you, or if at any time you wish to  
16 consult with your attorney, Ms. Sims, please let me know  
17 immediately and I will provide you with the time to consult  
18 with her in private.

19 I give you these instructions because it is  
20 essential to a valid plea that you understand each question  
21 before you answer.

22 Mr. Babik, will you please administer the oath to  
23 the defendant.

24 **KHALIFA ALI AL-AKILI, DEFENDANT HEREIN, WAS SWORN.**

25 THE CLERK: Please state your name for the record.

1 THE DEFENDANT: Khalifa Ali Al-Akili.

2 THE COURT: Mr. Al-Akili, please make sure you use  
3 the microphone so Ms. Earley can hear everything you say and I  
4 can hear everything you say.

5 Sir, do you understand having declared and affirmed  
6 to tell the truth, your answers to my questions are subject to  
7 the penalties of perjury or for making a false statement if  
8 you do not answer truthfully?

9 THE DEFENDANT: Yes, sir. Yes.

10 THE COURT: Would you please state your full name  
11 for the record.

12 THE DEFENDANT: Khalifa Ali Al-Akili.

13 THE COURT: Sir, is it also correct in the past you  
14 have been known by the name James Marvin Thomas, Junior, and  
15 you are one in the same person?

16 THE DEFENDANT: Yes.

17 THE COURT: How old are you?

18 THE DEFENDANT: 35.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: I received my GED and I also went  
21 to Kaplan Career Institute but I didn't complete the course.

22 THE COURT: Have you been able to communicate with  
23 your lawyer, Ms. Sims, without any problem?

24 THE DEFENDANT: Yes.

25 THE COURT: Ms. Sims, have you been able to

1 communicate with your client without any problems?

2 MS. SIMS: Yes, Your Honor.

3 THE COURT: Mr. Al-Akili, have you taken any  
4 prescribed or non-prescribed drugs or consumed any alcohol in  
5 the last 24 hours?

6 THE DEFENDANT: No.

7 THE COURT: Are you now or have you recently been  
8 under the care of a doctor?

9 THE DEFENDANT: No.

10 THE COURT: Are you now or have you recently been  
11 under the care of a psychiatrist or psychologist?

12 THE DEFENDANT: No.

13 THE COURT: Sir, are you now or have you recently  
14 been hospitalized or treated for narcotic or drug addiction or  
15 abuse?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Sir, do you understand what is  
18 happening here today?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Mr. Wilson, on behalf of the United  
21 States, do you have any doubt as to the defendant's competence  
22 to enter a plea of guilty at this time?

23 MR. WILSON: I have none, Your Honor.

24 THE COURT: Ms. Sims, do you have any doubt as to  
25 the defendant's competence to enter a plea of guilty at this

1 time?

2 MS. SIMS: I do not, Your Honor.

3 THE COURT: Based on the answers provided by the  
4 defendant, Mr. Al-Akili, the representations of his counsel  
5 and counsel for the United States of America, the Court finds  
6 that the defendant is competent to participate in the  
7 proceedings today.

8 Mr. Al-Akili, am I correct Ms. Sims is your lawyer  
9 and she is representing you for purposes of today's proceeding  
10 in your case in this court?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you had ample opportunity and  
13 sufficient time to discuss your case and today's proceedings  
14 with your lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you satisfied with the job that she  
17 has done for you?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Sir, have you been furnished with a  
20 copy of the charges against you?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Have you discussed with your lawyer,  
23 Ms. Sims, the charges that are in the indictment which are the  
24 charges to which you intend to plead guilty?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Sir, do you understand that you are  
2 charged with a felony, namely, that on or about July 4, 2010,  
3 in the Western District of Pennsylvania, after having been  
4 convicted in the courts of the County of Westmoreland of the  
5 Commonwealth of Pennsylvania, on or about October 25, 2000, in  
6 Criminal Action No. 4505C1999, of the crime of possession with  
7 intent to deliver a controlled substance, a felony, along with  
8 the crime of delivery of a controlled substance, a felony,  
9 which are crimes punishable by imprisonment for a term  
10 exceeding one year, you did knowingly possess, in and  
11 affecting interstate commerce, a .22-caliber rifle in  
12 violation of Title 18 of the United States Code, Section  
13 922(g)(1)?

14           THE DEFENDANT: Yes, sir.

15           THE COURT: Do you understand these charges and  
16 have they been explained to you by your lawyer?

17           THE DEFENDANT: Yes, I understand them.

18           THE COURT: Sir, the Court is now ready to consider  
19 your stated intent to plead guilty to Count 1 of the  
20 indictment.

21           Mr. Al-Akili, do you understand if you would plead  
22 not guilty, you have the right to persist in that plea and to  
23 be assisted by a lawyer at the trial and in all other phases  
24 of the processing of those charges?

25           THE DEFENDANT: Yes, sir.

1           THE COURT: Do you also understand that if you  
2           qualify financially, you're entitled to be assisted by a  
3           lawyer at no cost to you at all phases of the processing of  
4           these charges against you?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: Sir, do you also understand that under  
7           the Constitution and laws of the United States of America, you  
8           are entitled to a speedy trial by a judge and jury on the  
9           charges contained in the indictment?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Do you also understand you have the  
12          right to plead not guilty and to persist in that plea?

13          THE DEFENDANT: Yes.

14          THE COURT: Sir, do you understand that at a trial,  
15          you would be presumed to be innocent?

16          THE DEFENDANT: Yes, I do.

17          THE COURT: Do you also understand that at a trial,  
18          you would not have to prove that you were innocent, the  
19          government would be required to prove your guilt by competent  
20          evidence and beyond a reasonable doubt before you could be  
21          found guilty of any charge against you?

22          THE DEFENDANT: Yes, sir.

23          THE COURT: Sir, do you understand that at a trial,  
24          the jury must be unanimous in order to find you guilty on the  
25          charges against you?



1 THE DEFENDANT: Yes, I do.

2 THE COURT: Sir, do you understand that you would  
3 have the right to participate in the selection of the jury and  
4 that you would have the right to strike or eliminate any  
5 prospective juror if it was demonstrated that that juror was  
6 unable to render a fair and impartial verdict?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you also understand that in  
9 addition, you would have the right to strike ten jurors  
10 without assigning any reason at all?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sir, do you understand that in the  
13 course of a trial, the witnesses for the government would have  
14 to come to court and testify in your presence?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that in the  
17 course of a trial, your attorney could cross-examine the  
18 witnesses for the government, object to any evidence offered  
19 by the government, and also offer evidence on your behalf?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Al-Akili, do you understand in the  
22 course of a trial, that if you qualify as being financially  
23 unable to pay witness fees to witnesses you wish to call on  
24 your behalf, the government would be required to pay those  
25 witness fees?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand that at a trial,  
3 you would have the right to testify if you chose to do so?

4 THE WITNESS: Yes, sir.

5 THE COURT: Sir, do you understand that at a trial,  
6 you also would have the right not to testify and no inference  
7 or suggestion of guilt could be drawn from the fact that you  
8 did not testify?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Al-Akili, if you plead guilty and  
11 the Court accepts your plea, do you understand that you will  
12 waive your right to a trial and the other rights I just  
13 discussed, there will be no trial, and the Court will enter a  
14 judgment of guilt and then sentence you on the basis of your  
15 guilty plea after considering a presentence report?

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, do you understand that if you  
18 plead guilty, you will also have to waive your right not to  
19 incriminate yourself since I may ask you questions about what  
20 you did in order to satisfy the Court that you are guilty as  
21 charged and you will have to acknowledge your guilt?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Al-Akili, having discussed your  
24 rights with you, is it still your desire to plead guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Al-Akili, do you understand that  
2 the Sentencing Guidelines set forth by the United States  
3 Sentencing Commission are only advisory to the Court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Therefore, for good reason, subject to  
6 any agreements contained in an applicable plea agreement that  
7 would be accepted by the Court, the Court may sentence you  
8 outside the recommended guideline range but within the  
9 applicable statutory or minimum and maximum penalties?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you also understand that the Court  
12 would not determine the advisory guideline ranges for your  
13 case until after the presentence report has been completed and  
14 both you and the government and your lawyers have had an  
15 opportunity to challenge the facts that are reported to me by  
16 the probation office?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Al-Akili, do you understand that  
19 under the Sentencing Reform Act of 1984, parole has been  
20 abolished and if you are sentenced to prison, you will not be  
21 eligible for parole?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand, sir, that in  
24 determining your sentence, the Court will be obligated to  
25 calculate the sentencing guideline range and to consider that

1 range, any possible departures under the Sentencing Guidelines  
2 and the other sentencing factors under Title 18, United States  
3 Code, Section 3553, including any applicable provisions of a  
4 plea agreement that has been accepted by the Court?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Al-Akili, at this time the Court  
7 would advise you concerning the minimum and total maximum  
8 sentence as provided by law.

9 Sir, do you understand that the maximum sentence as  
10 to Count 1 is any or all of the following:

11 Not more than ten years imprisonment, unless it is  
12 determined or stipulated that you have three previous  
13 convictions for violent felony or serious drug offense or  
14 both, in which case pursuant to 18 U.S.C., Section 924(e), the  
15 term of imprisonment is not less than 15 years to a maximum of  
16 life imprisonment, a fine not to exceed \$250,000 may also be  
17 imposed in any case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if the Court  
20 were to sentence you to any term of imprisonment, the Court  
21 would also impose a term of supervised release of not more  
22 than three years as to such count or a term of supervised  
23 release of not more than five years if the sentencing  
24 enhancement for prior convictions applies?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Sir, do you understand that if you were  
2 to violate the terms of supervised release, the Court would  
3 revoke the supervised release, you would be incarcerated and  
4 no credit would be given to you for the time you previously  
5 had been on supervised release?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It is the Court's understanding that  
8 forfeiture may also be an issue in this case, is that correct?

9 MR. WILSON: I don't believe that's the case.

10 MS. SIMS: No.

11 THE COURT: So the parties stipulate that  
12 forfeiture is not an issue in this case, Ms. Sims?

13 MS. SIMS: That's correct.

14 MR. WILSON: That's correct.

15 MS. SIMS: The gun was not recovered.

16 THE COURT: It's also the Court's understanding  
17 restitution is not an issue in this case, is that correct?

18 MR. WILSON: That's correct.

19 THE COURT: Ms. Sims?

20 MS. SIMS: Yes.

21 THE COURT: Mr. Al-Akili, do you also understand  
22 that any sentence imposed will include a special assessment of  
23 \$100 pursuant to Title 18, United States Code, Section 3013?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Do you understand, sir, that the

1 offense to which you are pleading guilty is a felony offense,  
2 that if your plea is accepted, you will be adjudged guilty of  
3 the offense and that such an adjudication may deprive you of  
4 valuable rights, such as the right to vote, the right to  
5 certain employment, the right to public office, the right to  
6 serve on a jury, and the right to possess any kind of firearm,  
7 weapon, or dangerous device?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Al-Akili, are you a citizen of the  
10 United States of America?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Sir, were you born in the United States  
13 of America?

14 THE DEFENDANT: Yes, I was.

15 THE COURT: Mr. Al-Akili, do you understand that  
16 your guilty plea might negatively affect any probation or  
17 parole that you might now be serving?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Mr. Al-Akili, do you understand that  
20 this Court may or may not approve any plea agreement which you  
21 might enter into and that you have a duty to disclose any such  
22 agreement to the Court. If you do not disclose the agreement  
23 now, you may not later assert the existence of any plea  
24 negotiation or plea agreement.

25 Ms. Sims and Mr. Wilson, is there a plea agreement

1 in this case?

2 MS. SIMS: Yes, Your Honor.

3 MR. WILSON: Yes, there is.

4 THE COURT: Mr. Al-Akili, the Court has been  
5 informed there's been a plea agreement entered into between  
6 you, Mr. Al-Akili, and your lawyer and the lawyer for the  
7 United States, is that correct?

8 THE DEFENDANT: Yes, it is.

9 THE COURT: Mr. Wilson, will you please show the  
10 defendant a copy of the plea agreement letter.

11 Mr. Wilson, it is my understanding this is a plea  
12 agreement that includes provisions pursuant to Federal Rule of  
13 Criminal Procedure Rule 11(c)(1)(C), is that correct?

14 MR. WILSON: That is.

15 THE COURT: Is that correct, Ms. Sims?

16 MS. SIMS: Yes.

17 THE COURT: Mr. Al-Akili, have you seen this plea  
18 agreement letter before?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Have you read it yourself in its  
21 entirety?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Has your lawyer reviewed it with you?

24 THE DEFENDANT: Yes, she has.

25 THE COURT: Mr. Al-Akili, did you sign the last

1 page of that plea agreement letter?

2 THE DEFENDANT: Yes, I have, sir.

3 THE COURT: By signing that plea agreement letter,  
4 did you agree to the terms that are set forth in that letter?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Mr. Wilson, before we go to sidebar,  
7 would you at this point on the record, please, review the  
8 essential terms of the plea agreement for the Court and the  
9 defendant.

10 MR. WILSON: Yes, Your Honor. I'll pass up the  
11 original to the Court.

12 Your Honor, in Subpart A, the defendant agrees to  
13 enter a plea of guilty to the single count of the indictment,  
14 which the Court has already outlined in this matter.

15 In Subpart A3, the defendant acknowledges that he  
16 is waiving his right to appeal except under limited conditions  
17 as set forth in Subparagraphs A and B, which I'm sure the  
18 Court is familiar with, as is Ms. Sims, as the standard  
19 conditions in plea letters proffered by the United States  
20 Attorney's Office.

21 In Subpart B, Your Honor, the United States  
22 indicates that it will reserve its right to inform the Court  
23 at the time of sentencing of those factors, which are material  
24 to the Court's fashioning an appropriate sentence.

25 In Subpart C, the parties agree as to the maximum



1 penalties as the Court has already outlined them.

2 The parties also agree relative to the sentence in  
3 this case set forth in Subpart C3, the particulars of that,  
4 Your Honor, may be addressed at sidebar.

5 Those are the -- in broad sweep, those are the  
6 provisions of the plea letter as set forth in the document  
7 which I hand to the Court.

8 THE COURT: Thank you very much, Mr. Wilson.

9 Mr. Al-Akili, I'm looking at the last page of the  
10 plea agreement. There is a signature line which underneath it  
11 bears the typed name Khalifa Ali Al-Akili, a/k/a James Marvin  
12 Thomas, Junior. There is a signature on that line.

13 Mr. Al-Akili, is that, in fact, your signature?

14 THE DEFENDANT: Yes.

15 THE COURT: It bears the date 11-27-12, which is  
16 today's date. Did you sign it today?

17 THE DEFENDANT: Yes.

18 THE COURT: I note under the witness section the  
19 typed name Marketa Sims, Esq., counsel for defendant Khalifa  
20 Ali Al-Akili, a/k/a James Marvin Thomas, Junior.

21 Ms. Sims, is that, in fact, your signature?

22 MS. SIMS: Yes, it is, Your Honor.

23 THE COURT: Mr. Al-Akili, by placing your signature  
24 on the last page of this plea agreement, did you intend to  
25 indicate your acceptance and agreement of the terms set forth

1 in the plea agreement letter?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: At this point, Mr. Babik, we'll go to  
4 sidebar.

5 (Sidebar discussion held as follows:)

6 (Sidebar discussion was concluded.)

7 THE COURT: We are away from sidebar and on the  
8 record.

9 Ms. Sims, do you agree the essential terms of the  
10 plea agreement have been stated to the defendant by counsel  
11 for the United States?

12 MS. SIMS: I do.

13 THE COURT: Mr. Al-Akili, have you heard the terms  
14 of the plea agreement as it has been reviewed for you by the  
15 Court and Mr. Wilson?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Al-Akili, has the attorney for the  
18 United States, Mr. Wilson, correctly stated the plea agreement  
19 as you understand it?

20 THE DEFENDANT: Yes, he has.

21 THE COURT: Mr. Al-Akili, does the plea agreement  
22 set forth your understanding and agreement with the government  
23 concerning the disposition of the charges pending against you?

24 THE DEFENDANT: Yes.

25 THE COURT: Sir, do you have any other agreement or

1 understanding with the United States government concerning the  
2 charge pending against you that is not set forth in the plea  
3 agreement?

4 THE DEFENDANT: No, I don't.

5 THE COURT: Mr. Al-Akili, do you understand that  
6 ordinarily, you or the government may have the right to appeal  
7 any sentence the Court imposes.

8 However, the Court notes that in the provisions of  
9 the plea agreement, you and the government agree that you  
10 would waive, that means give up, your right to take a direct  
11 appeal from your conviction and sentence subject to the  
12 following exceptions:

13 If the United States appeals from the sentence, you  
14 may then take a direct appeal from the sentence in that  
15 circumstance, do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: You may also take a direct appeal from  
18 the sentence only on the following grounds:

19 The sentence exceeds the applicable statutory  
20 limits set forth in the United States Code or the sentence  
21 imposed unreasonably exceeds the guideline range determined by  
22 the Court under the Sentencing Guidelines, do you understand  
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: To repeat, by these provisions of the

1 plea agreement, you are giving up the right to appeal both the  
2 validity of your plea of guilty and except as specifically set  
3 forth in the plea agreement, your sentence, do you understand  
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Further, under the provisions of the  
7 plea agreement, you will have also waived the right to file a  
8 motion to vacate your sentence under Title 28 of the United  
9 States Code, Section 2255, and the right to file any other  
10 collateral proceeding attacking your conviction or sentence,  
11 do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Al-Akili, has anyone made a threat  
14 to you or to anyone else that has forced you to waive these  
15 rights?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone made any promise to you  
18 other than the promises that are in the plea agreement that  
19 has induced you or caused you to waive these rights?

20 THE DEFENDANT: No, sir.

21 THE COURT: The Court finds that the defendant has  
22 entered into these waivers knowingly and voluntarily.

23 The Federal Rule of Criminal Procedure 11 provides,  
24 in relevant part, that when a plea agreement specifies that an  
25 attorney for the government will move to dismiss a certain

1 charge or will agree that a specific sentence or sentencing  
2 range is the appropriate disposition of a case or that a  
3 particular provision of the Sentencing Guidelines, or a policy  
4 statement, does not apply or is the case here, that the Court,  
5 if it accepts the plea agreement, will be obligated to impose  
6 the sentence agreed to in the plea agreement.

7           The Court may accept the agreement, reject it, or  
8 defer a decision until the Court has reviewed the presentence  
9 report.

10           I will refer this matter to the probation office  
11 for the preparation of a Presentence Investigation Report and  
12 recommendation.

13           In this connection, Mr. Al-Akili, you will be  
14 interviewed by the probation office and the Court will inspect  
15 the report they prepare in order to determine an appropriate  
16 sentence in your case, consistent with the terms of your plea  
17 agreement.

18           Are you willing to be interviewed by the probation  
19 office and have me review that report prior to entering your  
20 sentence?

21           THE DEFENDANT: Yes, sir.

22           THE COURT: The Court will defer its decision on  
23 acceptance of the plea agreement until it has reviewed the  
24 presentence report and any addendum that will be prepared by  
25 the probation officer.

1           Mr. Al-Akili, do you understand that after  
2 reviewing the presentence report and any addendum thereto, the  
3 Court may accept or reject the plea agreement in this case?

4           THE DEFENDANT: Yes, sir.

5           THE COURT: You understand that if this Court after  
6 reviewing the presentence report and any addendum thereto  
7 rejects the plea agreement, the Court will not be required to  
8 follow the plea agreement and you will be given an opportunity  
9 to withdraw your plea and proceed to a trial on the charge  
10 that is contained in the indictment in this case?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: Do you understand that if this Court  
13 rejects the plea agreement and you do not withdraw your plea,  
14 the Court may then dispose of the case in a matter less  
15 favorable to you than the terms that are in the plea  
16 agreement?

17          THE DEFENDANT: Yes, sir.

18          THE COURT: You must understand that if I do not  
19 approve the plea agreement and if you then do not withdraw  
20 your plea, any recommendation of sentence which may then be  
21 made or agreed to by your lawyer or made by the government or  
22 any agreement not to oppose your lawyer's requested sentence  
23 will not be binding on the Court and you could, on the basis  
24 of your guilty plea, receive up to the maximum sentence  
25 provided by law?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand that if I do not  
3 approve the plea agreement in this case and if you then do not  
4 withdraw your plea of guilty, I will not be obligated to  
5 follow or apply anything that's in that plea agreement?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if in those  
8 circumstances I decline to impose a sentence recommended by  
9 the prosecutor or by your lawyer and impose a more severe  
10 sentence, you will not on that basis be entitled to then  
11 withdraw your guilty plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Babik, do we have a copy of the  
14 plea agreement?

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Mr. Wilson, other than the plea  
17 agreement that has been presented here today, did the  
18 government tender to counsel for the defendant any other  
19 formal plea agreement offer?

20 MR. WILSON: We did not, Your Honor.

21 THE COURT: Ms. Sims, did you receive any formal  
22 plea agreement offer from the government which you did not  
23 communicate to the defendant?

24 MS. SIMS: I did not, Your Honor.

25 THE COURT: Mr. Al-Akili, has anyone made a threat

1 to you or to anyone else that has forced you or caused you to  
2 plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: Mr. Al-Akili, has anyone made any  
5 promise other than those contained in the plea agreement that  
6 has caused you or induced you to plead guilty?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Mr. Al-Akili, other than the matters  
9 set forth in the plea agreement, has anyone made any  
10 prediction or promise as to what your actual sentence will be  
11 other than what I told you about the applicable sentences in  
12 this case?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Mr. Al-Akili, has anything I said here  
15 today, other than what I told you about the minimum and  
16 maximum sentence and the matters set forth in the plea  
17 agreement, told you or suggested to you what your actual  
18 sentence will be?

19 THE DEFENDANT. Has it told me?

20 THE COURT: Yes, sir.

21 THE DEFENDANT: Yes, Your Honor, in the agreement.

22 THE COURT: The terms of the agreement?

23 THE DEFENDANT: Right, yes, sir.

24 THE COURT: We reviewed that already.

25 THE DEFENDANT: Yes, sir.



1 THE COURT: Ms. Sims, are you confident  
2 Mr. Al-Akili understands those provisions of the applicable  
3 plea agreement?

4 MS. SIMS: I am, Your Honor.

5 THE COURT: Mr. Al-Akili, have you been instructed  
6 by your lawyer, the lawyer for the government, or anyone else  
7 to respond untruthfully to any question I've asked you today?

8 THE DEFENDANT: No, I haven't.

9 THE COURT: Have you, sir, in fact, answered  
10 truthfully all of the questions I asked you today?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Mr. Al-Akili, do you have any physical  
13 or mental illness or condition which would or might affect  
14 your ability to understand the rights I explained to you or  
15 affect the voluntary nature of your plea today?

16 THE DEFENDANT: No, I don't.

17 THE COURT: Mr. Wilson, what in summary would be  
18 the government's evidence as to the charges in the indictment  
19 and the elements of the offenses charged which the government  
20 must prove at the time of trial?

21 Mr. Al-Akili, I intend to ask you whether you agree  
22 with the government's summary of what you did. Before I ask  
23 you that, I must advise you your answers may later be used  
24 against you in a prosecution of perjury or making a false  
25 statement if you do not the answer them truthfully.

1 Mr. Wilson, the floor is yours.

2 MR. WILSON: Your Honor, first of all, with regard  
3 to the elements of the offense under Title 18, United States  
4 Code, Section 922(g)(1), in order for the United States to  
5 merit a verdict, we have to prove the following three  
6 elements:

7 First, that the defendant was convicted of a crime  
8 punishable by imprisonment for a period exceeding one year.

9 Second, that the defendant thereafter knowingly  
10 possessed a firearm.

11 Third, that the firearm was possessed in or  
12 affecting interstate commerce.

13 Those are the three elements that it is our burden  
14 to demonstrate beyond a reasonable doubt.

15 Your Honor, the government has available to testify  
16 a number of witnesses. All of the evidence and testimony  
17 stems from an incident at a place called the Trafford  
18 Sportsmen's Club here in the Western District of Pennsylvania  
19 just by the border of Westmoreland County, Allegheny County,  
20 which is, in fact, an outdoor shooting range.

21 The testimony would be essentially, Your Honor,  
22 that the defendant, accompanied by two other individuals,  
23 traveled on July the 4<sup>th</sup> of 2010 to the Trafford Sportsmen's  
24 Club in a green Jeep Sahara. Having arrived at the Trafford  
25 Sportsmen's Club, one of the individuals who traveled with the

1 defendant provided a .22 long rifle and a .38-caliber pistol.

2 This individual would testify that the defendant  
3 fired the rifle multiple times that particular day. He does  
4 not recall whether the defendant fired the .38-caliber handgun  
5 or not.

6 Later that day, Your Honor, after the trip to the  
7 Sportsmen's Club on the border between Allegheny and  
8 Westmoreland County, this individual, who traveled with the  
9 defendant to the shooting range who owned the weapons in  
10 question, sent to the defendant a series of emails, and these  
11 emails had attached to them both photographs and videos of the  
12 activities that took place that day at the Trafford  
13 Sportsmen's Club.

14 Your Honor, I would proffer to the Court three  
15 photographs, all of which have already been given to the  
16 defendant on a much earlier date.

17 The first is Government's Exhibit No. 1 with  
18 today's date. This is a still photograph that was attached to  
19 one of the emails sent to the defendant by his associate. It  
20 shows the defendant from the rear right-hand position holding  
21 the rifle pointing it down range.

22 Government Exhibit No. 2 is a photograph taken at  
23 the same location. The defendant is seen sitting on a bench  
24 with the rifle muzzle down in front of him leaning against the  
25 bench.

1 Government Exhibit No. 3, Your Honor, is a  
2 photograph from the same location simply showing for the Court  
3 the benches as they were arranged at the Sportsmen's Club that  
4 day.

5 Two of the emails, which were sent by the  
6 defendant's associate to him later that same day on the 4<sup>th</sup> of  
7 July, were sent at seven p.m. and had six photographs attached  
8 and at 7:28 p.m. and had two videos attached.

9 Your Honor, the government would also offer  
10 evidence from an individual named Jason Katinski (phonetic),  
11 who was present at the Sportsmen's Club that day with his  
12 father and two other individuals. They were firing guns at  
13 targets, as was the defendant and his associates.

14 Mr. Katinski was interviewed by the FBI and would  
15 be prepared to testify that he recalled three individuals, two  
16 black males and a white male, arriving at the Sportsmen's Club  
17 that day. He recalls that they had with them a .22 long rifle  
18 and a .38-caliber pistol.

19 He recalled one individual dressed in what he  
20 described as Muslim garb and he identified that as the white  
21 male and discussed a rope-like garment, a cap on his head and  
22 a long reddish beard.

23 He was shown a 7-second video, Your Honor. This  
24 was one of the videos sent by Mr. Al-Akili's associates to him  
25 on the 4<sup>th</sup> of July 2010.

1           On that video, Your Honor, the defendant is shown  
2 with the gun pointing down range but there's no firing taking  
3 place and a person's voice is heard coming in and Mr. Al-Akili  
4 is seen turning in profile and looking to his left.

5           Mr. Katinski would identify the speaker at that  
6 time as his father, who was one of the persons related to the  
7 Sportsmen's Club who was attempting to enforce a rule at the  
8 Sportsmen's Club.

9           He also identifies the defendant in the video as  
10 the person he recalls from that particular day.

11           Your Honor, the government also has available to  
12 testify another of the individuals who were with Mr. Katinski,  
13 who would essentially affirm his outline of the events that  
14 took place on the 4<sup>th</sup> of July, 2010.

15           Your Honor, the government also has available an  
16 additional video that was sent by Mr. Al-Akili's associate to  
17 him on the day in question, that is the 4<sup>th</sup> of July, 2010.  
18 This is a 23-second video which shows the defendant from the  
19 right rear in much the same view as the photograph  
20 Government's No. 1 which I gave to the Court.

21           In this you can see the defendant firing the gun  
22 three times down range toward the target. You can hear him  
23 speaking to his associates and them speaking to him relative  
24 to whether or not he has, in fact, hit the target.

25           Your Honor, the government also has available an

1 FBI computer analyst who would testify that the videos that  
2 were attached to the email, the email having borne the date of  
3 July the 4<sup>th</sup>, 2010, when he examined the file format -- excuse  
4 me -- the exchangeable image file format data embedded in the  
5 videos, they show that the videos had been produced, that is,  
6 they had been taken on the 4<sup>th</sup> of July, 2010.

7 Now, the FBI computer analysis witness would  
8 testify that the date mechanism, that is the dating mechanism  
9 on the video camera, could have been manipulated by someone to  
10 impose some other date, that is, it's an adjustable mechanism,  
11 but the government would argue that the date is consistent  
12 with the date of the email traffic and the date is consistent  
13 with the recollection of the civilian witnesses present at the  
14 Sportsmen's Club on the 4th of July, 2010.

15 Finally, the government has available Mr. Joseph  
16 Bartozi (phonetic) of the Mossberg Firearms Company.  
17 Mr. Bartozi is currently General Counsel and Director of  
18 Technical Services for Mossberg Firearms.

19 He has worked for Mossberg for 26 years, beginning  
20 on the production floor actually building and assembling  
21 weapons, rising through the rank of marketing management to  
22 become their General Counsel and their Director of Technical  
23 Services.

24 He examined the photographs of the rifle as  
25 depicted in the pictures which we've proffered to the Court

1 and indicated that he used devices to magnify and enlarge the  
2 images to give them greater scrutiny. I would note as a  
3 precedent to his testimony, the government does not have  
4 possession of the rifle in this case.

5 The owner of the rifle testified that it was lost  
6 or stolen and could not locate it.

7 Mr. Bartozi would say his magnified view of the  
8 firearm in question, he was able to identify nine separate  
9 characteristics that allowed him to say with certainty that  
10 this was a Mossberg .380. He just could not say with  
11 certainty whether it was a .380 or .380-S.

12 They are two models of the same weapon with very  
13 slight variations but what he said, and I quote, I don't  
14 believe any serious firearms examiner could say that the rifle  
15 in question is not a Mossberg.

16 The significance, of course, Your Honor, being that  
17 Mossberg has its production facilities in Connecticut and has  
18 had as long as they have been making weapons, so any rifle  
19 produced by Mossberg would have had to travel in interstate  
20 commerce to get to the Commonwealth of Pennsylvania.

21 Your Honor, the government would also offer into  
22 evidence the certified copy of the record from Westmoreland  
23 County relative to the counts of conviction that were  
24 identified in the indictment coming from Criminal Action  
25 No. 4504C1999. These have been provided to the defense. I

1 have the copy here, Your Honor.

2 The Court would note it's very thick. It's not  
3 just the information but it's all the attached documentation.

4 With the Court's permission, I'll give this back to  
5 the probation office because they're going to use it in part  
6 in their preparation of the presentence report.

7 THE COURT: That permission is granted.

8 MR. WILSON: Your Honor, that is an outline of the  
9 testimony that the government would offer to meet the three  
10 elements which I previously identified.

11 THE COURT: Thank you, Mr. Wilson.

12 Mr. Al-Akili, having heard the summary of the  
13 prosecution's case of your conduct, do you agree with the  
14 prosecution's summary of what you did?

15 THE DEFENDANT: Everything that he said that I did  
16 is true. I agree.

17 THE COURT: Is there anything as to what he said  
18 you did with which you disagreed?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are there any additions or corrections  
21 you wish to make to the summary?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Al-Akili, is it still your desire  
24 to enter a plea of guilty?

25 THE DEFENDANT: Yes, sir.



1 THE COURT: Ms. Sims, is that consistent with your  
2 advice?

3 MS. SIMS: It is, Your Honor.

4 THE COURT: Mr. Al-Akili, are you satisfied in all  
5 respects with the advice and representation which you have  
6 been provided by your lawyer, Ms. Sims?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Al-Akili, as to Count 1 of the  
9 indictment, did you on or about July 4, 2010, knowingly  
10 possess, in and affecting interstate commerce, a .22-caliber  
11 rifle, after having been previously convicted in the Court of  
12 Common Pleas of Westmoreland County, Pennsylvania, of two  
13 felonies, each being a crime punishable by imprisonment for a  
14 term exceeding one year, namely, possession with intent to  
15 deliver a controlled substance and delivery of a controlled  
16 substance, all as set forth in the indictment I summarized for  
17 you a few minutes ago?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How do you plead to those charges?

20 THE DEFENDANT: Guilty.

21 THE COURT: The Court finds that the defendant is  
22 competent, that he knows and understands his right to a jury  
23 trial and the consequences of waiving that right, and that he  
24 knows what the minimum and maximum penalties are and that  
25 there is a factual basis for his plea of guilty.

1           The Court, therefore, accepts the defendant's  
2 guilty plea and hereby adjudges Khalifa Ali Al-Akili guilty of  
3 the crime set forth in Count 1 of the referenced criminal  
4 indictment.

5           Mr. Al-Akili, since you acknowledge that you are,  
6 in fact, guilty as charged in Count 1 of the indictment, since  
7 you know your right to a trial, since you know what the  
8 minimum and maximum possible penalties are, and since you are  
9 voluntarily pleading guilty, the Court accepts your guilty  
10 plea and enters a judgment of guilty on your plea.

11           Mr. Babik, will you please arrange for the  
12 defendant and counsel for the defendant to sign the  
13 arraignment plea document.

14           (Whereupon, counsel and defendant sign document.)

15           THE COURT: The Court has been handed a one-page  
16 document bearing the caption United States of America,  
17 plaintiff, versus Khalifa Ali Al-Akili, defendant, at Docket  
18 No. 12-cr-91. It's entitled "Change of Plea" and it reads:

19           And now the defendant in the above-entitled case  
20 hereby withdraws his plea of not guilty and now pleads guilty  
21 to Count 1 in open court this 27<sup>th</sup> day of November, 2010.

22           There is a line which bears the typed notation  
23 "Defendant's Signature," which bears a signature.

24           Mr. Al-Akili, is that, in fact, your signature on  
25 that line?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: By affixing your signature to this  
3 document, did you intend to confirm in writing your entry of a  
4 plea of guilty to Count 1 of the indictment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Ms. Sims, there's a second line which  
7 bears the typed title "Attorney for Defendant's Signature."  
8 There is a signature on that line. Whose signature is that?

9 MS. SIMS: My signature.

10 THE COURT: By doing so, did you intend to confirm  
11 your signature on this change of plea document?

12 MS. SIMS: I did.

13 THE COURT: That document will be entered into the  
14 record.

15 The exhibits provided by Mr. Wilson on behalf of  
16 the United States during his provision of a summary of the  
17 essential elements of the offense and the evidence that would  
18 be induced by the government will be received in the record.

19 The Court hereby orders that a Presentence  
20 Investigation Report be prepared by the United States Office  
21 of Probation and Pretrial Services.

22 Mr. Al-Akili, that report will be very important to  
23 the Court in its decision as to your sentence in this case.

24 Pursuant to our Local Rules of Criminal Procedure,  
25 you and your attorney will have an opportunity to examine the

1 report that is prepared. You will have the right and the  
2 opportunity to present information to the Court concerning any  
3 matters in the report with which you dispute.

4 The United States will be given that very same  
5 opportunity.

6 Counsel should be aware of the provisions set forth  
7 in the Court's Local Rules of Criminal Procedure concerning  
8 the methods of the resolution of disputes concerning factors  
9 that are relevant to sentencing. The Court anticipates that  
10 counsel will comply with those provisions.

11 I will in the next day or so enter an order setting  
12 forth various dates for certain presentence activities. I  
13 will ask counsel please review it carefully. Sentencing will  
14 be set for March 21, 2013, at 10:00 a.m.

15 Ms. Sims, is there any other matter you or  
16 Mr. Al-Akili wish to bring to the Court's attention?

17 MS. SIMS: No, Your Honor.

18 THE COURT: Mr. Al-Akili, is there any other matter  
19 you would like to bring to my attention at this time?

20 THE DEFENDANT: I just want to say for the record,  
21 that I'm acknowledging my guilt and what I did and I believe  
22 it's in my best interest to plead guilty because of the  
23 severity of the amount of time I could face if I went to  
24 trial; but for the record, I just want to state that I believe  
25 this is a grave injustice because ten years is a lot of time.

1           Your Honor, I didn't know I was breaking the law.  
2 I didn't know I was breaking the law when I went to the gun  
3 range. When my friends invited me to the gun range, I didn't  
4 realize that was actual possession as a felon. I didn't have  
5 no understanding of that and my wife, she is not a citizen of  
6 this country and I have a daughter.

7           That is really rough to accept the fact I have to  
8 do ten years of my life in prison for something where I didn't  
9 hurt nobody.

10           THE COURT: Mr. Al-Akili, the Court acknowledges  
11 your statement and what you said. I feel duty bound to just  
12 confirm is it still your intention and is it your intention  
13 that you enter and I accept your plea of guilty to the charge  
14 in the indictment?

15           THE DEFENDANT: Yes, sir.

16           THE COURT: Ms. Sims, are you comfortable with my  
17 acceptance and entry of a plea of guilty on the charge of the  
18 indictment based on the statement just made by your client?

19           MS. SIMS: Your Honor, I'm feeling very  
20 uncomfortable with the entire situation but it is my advice  
21 that Mr. Al-Akili enter his plea.

22           THE COURT: Let me raise the question in fairness  
23 to you. Is there any reason I shall not accept the plea of  
24 guilty on Count 1 of the indictment given Mr. Al-Akili's  
25 reaffirmation of the plea?

1 MS. SIMS: There is not.

2 THE COURT: Mr. Wilson, anything further from you  
3 or you wish to bring to my attention?

4 MR. WILSON: Nothing. Thank you.

5 THE COURT: Mr. Wilson and Ms. Sims, it's my  
6 understanding defendant is now in the custody of the United  
7 States and he will remain so pending sentencing in this case  
8 is that correct?

9 MS. SIMS: Yes.

10 THE COURT: Is that correct, Mr. Wilson?

11 MR. WILSON: Yes.

12 THE COURT: With that, Mr. Wilson, is there any  
13 other matters we should take up at this time?

14 MR. WILSON: Nothing. Thank you.

15 THE COURT: Ms. Sims, is there any other matters we  
16 should take up at this time?

17 MS. SIMS: No, Your Honor.

18 THE COURT: With that, the proceedings for today  
19 are concluded.

20 Mr. Babik, I will provide you with the original of  
21 the signed plea agreement, along with the two documents that  
22 were tendered by Mr. Wilson during his statement of the  
23 summary of evidence, along with the executed change of plea  
24 agreement.

25 Let the record reflect that this morning the Court

1 did receive by Federal Express delivery a letter regarding  
2 sentencing factors that states it is from Mr. Al-Akili's  
3 spouse.

4 I have provided copies of that letter to counsel  
5 for the defendant and to counsel for the United States.

6 Is that correct, Ms. Sims?

7 MS. SIMS: Yes, Your Honor.

8 THE COURT: Is that correct, Mr. Wilson?

9 MR. WILSON: Yes, sir.

10 THE COURT: With that, the record is closed and the  
11 Court is adjourned.

12 (Whereupon, the proceedings were concluded.

13 - - -  
14  
15  
16

17 I hereby certify by my original signature herein,  
18 that the foregoing is a correct transcript, to the  
19 best of my ability, from the record of proceedings  
20 in the above-entitled matter.  
21  
22

23 S/ Karen M. Earley

24 Karen M. Earley

25 Certified Realtime Reporter

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